OD-3 ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

IA No.GA/6/2024
IN
CS/1166/1987

CHANDRAKALA DEVI & ORS.
VS.
DHARAM CHAND CHAUDHRY & ORS.

BEFORE:
The Hon'ble JUSTICE BIVAS PATTANAYAK
Date: 6th December, 2024.

Mr. Mohit Gupta, Mr. A. P. Agarwalla, Advocates for defendant no.1/applicant.

Mr.Sourojit Dasgupta, Mr. Joydeep Guha, Advocates for plaintiffs.

The Court : By the present application, the applicant/defendant no.1 has made the following prayers:

> *"(a) The Reports dated 3rd January 2024 and 28th February 2024 filed by the Learned Registrar, Original side in C.S. No. 1166 of 1987 be directed to be produced.*
> *(b) The plaint in C.S. No. 1166 of 1987 (Partition and Administration Suit) be rejected.*
> *(c) All interim orders in C.S. No. 1166 of 1987 be vacated.*
> *(d) Costs of and incidental to this application as also the costs all throughout incurred in interlocutory proceedings from 1987 onwards as may be assessed by this Hon'ble Court be paid by the plaintiffs to the defendant no.1.*
> *(e) Such further or other orders be passed as to this Hon'ble court may seem fit and proper."*

The principal contention of the petitioner is that since filing of the suit, the plaintiffs did not lodge writ of summons for service upon the

defendants and have failed to comply with requirement of Order VII Rule 9 of the Code of Civil Procedure *(hereinafter referred to as the 'Code')*.

Mr. Mohit Gupta, learned Advocate for the applicant/defendant no.1 submits that the plaintiffs did not take any step for lodging of writ of summons for service upon the defendants. There was no order of Court extending the time to file writ of summons or dispensing with service of writ of summons upon the defendants. Accordingly, in view of Order VII Rule 11 Sub-Rule (f) of the Code the plaint is liable to be rejected for non-compliance of Rule 9. To buttress his contention, he relies on a decision of this Court in the case of ***Shrikant Mantri & Ors. versus Radheshyam Chotia & Ors.*** reported in ***2006 SCC OnLine Cal 237***.

On the contrary, Mr. Sourojit Dasgupta, learned Advocate for the plaintiffs/respondents submits that by order dated 28th August, 2019 passed in GA 2645 of 2018 service of writ of summons of the suit on the defendants was dispensed with and the defendants were directed to file their respective written statement within 30th November, 2019. Therefore, the ground raised by the applicant/defendant no.1 is not at all sustainable. He also indicates that the order dated 28th August, 2019 was duly served upon the learned Advocate-on-Record for the applicant/defendant no.1. However, the said fact has not been disclosed by the applicant before the Court. He seeks for dismissal of the application as well as for appropriate orders. He places a copy of the aforesaid order dated 28th August, 2019, which is taken on record.

Mr. Gupta, learned Advocate for the applicant at this stage seeks an unconditional apology for not bringing such fact to the notice of the Court.

By order dated 28th August, 2019 passed in GA 2645 of 2018 following directions were issued :

> *"In view of the peculiar circumstances of the case, the service of the writ of summons of the suit on the defendants is dispensed with. The defendants shall file their respective written statement within November 30, 2019. The plaintiff shall also serve copies of the amendment plaint on the defendant nos.4, 5 and 6 by speed post as well as by way of personal service positively within September 30, 2019. The defendants shall file their writ statement within November 30, 2019."*

It manifest from the above order that service of writ of summons upon the defendants was dispensed with. Therefore, the grounds taken in the present application fall short of merit.

Accordingly, the application being GA/6/2024 stands dismissed.

By the aforesaid order, the defendants including defendant no.1/applicant were directed to file their written statement within 30th November, 2019. It is informed by the learned Advocate for the plaintiffs that the defendant no.1/applicant as well as other defendants have not filed their written statement since passing of the order on 28th August, 2019 till 30th November, 2019. Such being the position, the present suit will proceed undefended against all the existing defendants including the applicant/ defendant no.1, who has not filed written statement pursuant to the aforesaid order of this Court.

(BIVAS PATTANAYAK, J.)

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